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Fenix International Limited and Fenix Internet LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

N.Z., R.M., B.L., S.M., and A.L., individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

FENIX INTERNATIONAL LIMITED, FENIX INTERNET LLC, BOSS BADDIES LLC, MOXY MANAGEMENT, UNRULY AGENCY LLC (also d/b/a DYSRPT AGENCY), BEHAVE AGENCY LLC, A.S.H. AGENCY, CONTENT X, INC., VERGE AGENCY, INC., AND ELITE CREATORS LLC,

Defendants.

CASE NO.: 8:24-cv-01655-FWS-SSC

(1) SPECIALLY APPEARING DEFENDANTS FENIX INTERNATIONAL LIMITED'S AND FENIX INTERNET LLC'S NOTICE OF MOTION AND MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, FAILURE TO STATE A CLAIM, AND IMPROPER VENUE;

(2) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT;

FILED UNDER SEPARATE COVER:

(3) REQUEST FOR JUDICIAL NOTICE AND NOTICE OF DOCUMENTS INCORPORATED BY REFERENCE; and

(4) [PROPOSED] ORDER.

Judge: Hon. Fred W. Slaughter
Courtroom: 10D
Date: June 26, 2025
Time: 10 a.m.

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 26, 2025, at 10 a.m., in Courtroom 10D of the Ronald Reagan Federal Building and United States Courthouse, located at 411 West 4th Street, Santa Ana, California 92701, Specially Appearing Defendants Fenix International Limited ("FIL") and Fenix Internet LLC (collectively, "Fenix") will, and hereby do, present for hearing by the Court, the Honorable Fred W. Slaughter presiding, this motion to dismiss the First Amended Class Action Complaint ("FAC") filed by Plaintiffs N.Z. and R.M. (collectively, "Plaintiffs") for lack of personal jurisdiction and failure to state a claim, as well as improper venue as to Plaintiff R.M. ("Motion").

This Motion is made pursuant to Federal Rule of Civil Procedure 12(b)(2), 12(b)(3), and 12(b)(6), and is based on this Notice, the Memorandum of Points and Authorities that follows, the accompanying Request for Judicial Notice and Notice of Documents Incorporated by Reference, the files and records in this action, the arguments of counsel, and any other matters the Court may properly consider. The grounds for this motion are as follows:

Personal Jurisdiction

- The Court does not have personal jurisdiction over Fenix under 18 U.S.C. §1965(b) because Plaintiffs do not allege a multidistrict RICO conspiracy involving all Defendants;
- The Court does not have personal jurisdiction over Fenix under 18 U.S.C. §1965(d) because that provision is not a means for a court to acquire jurisdiction;
- The Court does not have general jurisdiction over Fenix because they are not incorporated or headquartered in California, and do not otherwise have such continuous and systematic contacts that they are essentially at home in California;
- The Court does not have specific jurisdiction over Fenix because they do not

have sufficient minimum contacts with California, and the Plaintiffs' claims do not arise out of or relate to Fenix Internet's connections with California;

- The Court should transfer Plaintiffs' claims against Fenix Internet to the District of Delaware, where Fenix Internet is subject to general jurisdiction and both sides have agreed that claims against Fenix Internet may be litigated.

Failure to State a Claim

- Plausibility: None of Plaintiffs' claims are plausible because they fail to plead facts showing that Fenix knew about the Agency Defendants' alleged use of third-party contractors to manage chats—the conduct targeted in the FAC;
- Section 230: 47 U.S.C. §230 bars Plaintiffs' claims because they are based on Fenix's role as the publisher of the OnlyFans website;
- Racketeer Influenced Corrupt Organizations Act ("RICO"): Plaintiffs fail to state a RICO or RICO conspiracy claim because they fail to allege the existence of a racketeering enterprise, do not plead cognizable damages, do not plead that the Defendants formed a conspiracy to violate RICO or commit wire fraud, and do not plead that Fenix had specific intent to defraud Plaintiffs;
- Video Privacy Protection Act ("VPPA"): Plaintiffs fail to state a VPPA claim because they fail to allege that Fenix knowingly disclosed their personal identifiable information to third parties;
- California Invasion of Privacy Act ("CIPA"): Plaintiffs fail to state a CIPA claim because they consented to Fenix's alleged conduct, and otherwise fail to plead that their communications were unlawfully intercepted;
- California Penal Code Section 502: Plaintiffs fail to state a Penal Code Section 502 claim because Plaintiffs do not plead: (1) Fenix accessed their data without permission; (2) Fenix knowingly violated the law; (3) Plaintiffs suffered cognizable damages; and (4) Fenix improperly accessed Plaintiffs' chats.

- Breach of Contract, Fraud, Deceit, Unfair Competition Law ("UCL"), and False Advertising Law ("FAL"): Plaintiffs' remaining California state law claims are each barred by OnlyFans' Terms of Service, which fatally undermine Plaintiffs' theories that Fenix misled them into purchasing chat services offered by OnlyFans Creators or had a duty to prevent other people from misleading Plaintiffs about those services.

Improper Venue as to Plaintiff R.M.

- Plaintiff R.M. does not reside in this District, claims he was defrauded by agency representatives located in other countries, and does not allege that any personal harms allegedly suffered by him or any material conduct by *any* Defendant (let alone Fenix) occurred in this District. Thus, his claims must be dismissed for improper venue.

This Motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on October 18, 2024, and May 16, 2025.

DATED: May 23, 2025 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: */s/ Jason D. Russell*
JASON D. RUSSELL
Attorneys for Specially Appearing Defendants
Fenix International Limited and Fenix Internet LLC

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PRELIMINARY STATEMENT

OnlyFans.com is an online subscription-based social media, content and video-sharing platform ("OnlyFans") that allows users ("Creators") to share and monetize entertainment content offered to other users ("Fans"). (FAC¶¶8-9.) Plaintiffs N.Z. and R.M. are two alleged California Fans who purportedly used OnlyFans to purchase content from Creators, including individualized messaging that allowed Plaintiffs to experience the fantasy of intimate conversations, even though Plaintiffs do not have a non-commercial relationship with any Creator. (*Id.*¶¶28-31, 250-323.) Plaintiffs claim some Creators did not provide the "authentic" relationships they paid for, outsourcing their interactions to third parties ("Agency Defendants") who managed the Creators' communications with Plaintiffs. Despite the contract for the interactions being expressly between the Creator and Fan, Plaintiffs blame FIL (the London-based owner and operator of OnlyFans) and its subsidiary Fenix Internet (together, "Fenix"), alleging that Fenix "duped" Plaintiffs into thinking the Creators they paid were personally engaging with them, and/or should have monitored their communications and stopped the Creators and Agency Defendants from using third parties' assistance to operate their accounts. The FAC should be dismissed for lack of jurisdiction, failure to state a claim, and improper venue as to Plaintiff R.M.[1]

First, the Court lacks personal jurisdiction over Fenix. RICO's nationwide service of process provision, 18 U.S.C. §1965(b), does not provide personal jurisdiction because Plaintiffs do not allege "a single nationwide RICO conspiracy" involving all defendants—a vital prerequisite under Ninth Circuit precedent. *See Butcher's Union Local No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 539 (9th Cir. 1986). The Court does not have general jurisdiction over Fenix because they are not incorporated or headquartered in California—the only ties that typically render a business "at home" in a jurisdiction. *See Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). And the Court lacks specific jurisdiction over Fenix because the only tie between Plaintiffs' claims against Fenix and California is the fact that

[1] Unless otherwise noted, all emphasis is added, and all citations, brackets, and internal quotation marks are omitted from quoted material.

two Plaintiffs are allegedly located here, which is insufficient. *See Walden v. Fiore*, 571 U.S. 277, 284 (2014).

Second, Plaintiffs' claims are not plausibly pled and are all barred by Section 230. Plaintiffs fail to plead key elements of their federal claims, and their six California claims are barred by (among other things) the OnlyFans Terms of Service ("Terms"), which expressly disclaim any Fenix obligation to ensure Plaintiffs' interactions are sufficiently "authentic." (ECF 60-1, PageID#359-60.)

Third, Plaintiff R.M. fails to plead a basis for venue in this District, since he resides in the Eastern District of California and does not allege significant conduct occurred here.

Because no basis exists for this action to proceed, it should be dismissed.

ARGUMENT

I. THE COURT LACKS PERSONAL JURISDICTION OVER FENIX

A. The Court Does Not Have Jurisdiction Under RICO

RICO contains special provisions for service of process in civil actions. Plaintiffs allege this "Court has personal jurisdiction over Defendants pursuant to 18 U.S.C. §§1965(b) and (d)." (FAC¶22.) Incorrect. Plaintiffs do not meet the applicable statutory requirements to invoke §1965(b)'s nationwide service of process provision against either Fenix entity, and §1965(d) does not create a vehicle to acquire personal jurisdiction.

1. Section 1965(b) Does Not Give the Court Personal Jurisdiction

Section 1965(b) provides that in any RICO action in a U.S. district court where "the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof." 18 U.S.C. §1965(b). Although this provision allows a court to obtain personal jurisdiction over a defendant through nationwide service of process, it also "makes clear" that "the right to nationwide service in RICO suits *is not unlimited*." *Butcher's Union*, 788 F.2d at 539. Among other things, a plaintiff must demonstrate "the facts show a *single nationwide* RICO conspiracy exists." *Gilbert v. Bank of Am.*, 2014 WL 4748494, at *4 (N.D. Cal. Sept.

23, 2014) (emphasis in original); *Limcaco v. Wynn*, 2021 WL 5040368, at *9 (C.D. Cal. Oct. 29, 2021) (same).

To meet this requirement, Plaintiffs must plead facts showing all defendants worked together to carry out one common RICO conspiracy, rather than alleging multiple different conspiracies with overlapping actors. For example, in *Butcher's Union*, plaintiffs brought RICO claims against 18 different defendants, arguing that several attorneys worked with four different employers to engage in separate union-busting campaigns. 788 F.2d at 537. The Ninth Circuit held the district court could not obtain jurisdiction over defendants under §1965(b) because plaintiffs failed to "allege a single nationwide RICO conspiracy." *Id.* at 539. The court reasoned there was no single "multidistrict conspiracy" because "none of the four defendant employers had any specific knowledge of or participation in any of the other" employer's union-busting activities, even though the same lawyers coordinated "each of the individual conspiracies." *Id.*

Here, Plaintiffs likewise fail to "allege a single nationwide RICO conspiracy." *Id.* Although Plaintiffs allege individual Creators worked with various Agency Defendants to manage their interactions with users, they do not allege *Fenix* coordinated with the Creators or Agency Defendants, nor that any Creator or Agency Defendant knew about or coordinated with any other Creator or Agency Defendant, to carry out the alleged conspiracy. (FAC¶¶365-75.) At best, Plaintiffs allege several entirely *separate* acts, which they claim misled Fans, rather than a single nationwide conspiracy encompassing all named Defendants. Accordingly, Plaintiffs cannot invoke §1965(b) to obtain personal jurisdiction over Fenix. *See, e.g.*, *Butcher's Union*, 788 F.2d at 539; *Gilbert*, 2014 WL 4748494, at *5 (no §1965(b) jurisdiction where "Plaintiffs fail to allege any connection between [one group of defendants] and [a second group of defendants] and the only connection between those two groups of defendants is that they are alleged to have done business with [a third group of Defendants]"); *Mir v. Greines, Martin, Stein & Richland*, 2015 WL 4139435, at *13 (C.D. Cal. Jan. 12, 2015) (no jurisdiction where plaintiffs only alleged defendant was connected with another defendant, but not all other members of the conspiracy).

2. Section 1965(d) Does Not Give the Court Personal Jurisdiction

Plaintiffs' efforts to assert personal jurisdiction over Fenix under §1965(d) are equally meritless. That section provides: "All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs." 18 U.S.C. §1965(d).

On its face, §1965(d) does not provide a vehicle for a court to obtain personal jurisdiction over a defendant. As shown, §1965(b) sets forth when and how a plaintiff can serve a "summon[s]"—the document that gives a court jurisdiction over a defendant, assuming constitutional requirements are satisfied. 18 U.S.C. §1965(b). Similarly, §1965(c) discusses when and how a party can serve a witness subpoena in a RICO action. *Id.* §1965(c). Thus, §1965(d)'s "reference to '[a]ll other process' must mean process *different* than a summons or a government subpoena, both of which are dealt with in previous subsections." *Cory v. Aztec Steel Bldg., Inc.*, 468 F.3d 1226, 1230 (10th Cir. 2006). Allowing a plaintiff to use §1965(d) to serve a summons—and thus acquire personal jurisdiction—would be nonsensical, rendering §1965(b) and (c) "duplicative." *PT United Can Co., Ltd. v. Crown Cork & Seal Co., Inc.*, 138 F.3d 65, 72 (2d Cir. 1998). It would also undermine Congress's decision in §1965(b) to allow nationwide service of process only when "the ends of justice [so] require." *Cory*, 468 F.3d at 1230.

Courts consistently reject efforts by plaintiffs to use §1965(d) to acquire personal jurisdiction over out-of-state defendants. *See, e.g.*, *Laurel Gardens, LLC v. McKenna*, 948 F.3d 105, 117-20 (3rd Cir. 2020) (holding RICO plaintiffs cannot rely on §1965(d) as a means to obtain personal jurisdiction); *Cory*, 468 F.3d at 1230 (same); *PT United*, 138 F.3d at 72 (same); *Mir*, 2015 WL 4139435, at *12 n.15 (same); *Bray v. Kendall*, 2010 WL 56181, at *5 (N.D. Cal. Jan. 5, 2010) (same). This Court should do the same.

B. Due Process Prohibits Exercising Personal Jurisdiction Over Fenix

Plaintiffs also cannot meet their burden to establish personal jurisdiction over Fenix under a traditional due process analysis. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004).

1. The Court Does Not Have General Jurisdiction

General jurisdiction exists when a party's contacts with the forum state are "so continuous and systematic as to render them essentially at home." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). A corporation is typically "at home" only within "[its] place of incorporation and principal place of business." *Daimler*, 571 U.S. at 137. FIL is incorporated and registered in England and Wales, with its principal place of business in London. (FAC¶39.) Fenix Internet is organized and headquartered in Delaware. (ECF60-1, ¶7.) Neither entity has offices, staff, or other physical presence in California, or a registered agent for service of process here. (*Id*. ¶10.) Thus, Fenix are not "at home" in California. *See Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) (rejecting general jurisdiction where these factors were absent).

2. The Court Does Not Have Specific Jurisdiction

Plaintiffs cannot demonstrate Fenix's "suit-related conduct [creates] a substantial connection with the forum [s]tate." *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1022-23 (9th Cir. 2017). For specific jurisdiction: (1) the defendant must "purposefully direct[] [his] activities" toward the forum or "purposefully avail[] [himself] of the benefits afforded by the forum's laws"; (2) the claim must "arise[] out of or relate[] to the defendant's forum-related activities"; and (3) "the exercise of jurisdiction [must] comport[] with fair play and substantial justice, i.e., it [must be] reasonable." *Id.* at 1023. Plaintiffs "bear the burden of satisfying the first two prongs of the test." *Schwarzenegger*, 374 F.3d at 802. Specific jurisdiction is assessed on a claim-by-claim basis. *See Rancour v. Lush*, 2024 WL 1829621, at *5 (C.D. Cal. Mar. 18, 2024).

(a) Plaintiffs Cannot Show Purposeful Direction or Availment

Most of Plaintiffs' claims sound in tort and are evaluated under the purposeful direction test. *See, e.g., Boat People S.O.S., Inc. v. Voice*, 2024 WL 3914508 at *13 (C.D. Cal. July 31, 2024). Plaintiffs' breach of contract claim is evaluated under the purposeful availment test. *See Boschetto v. Hansing*, 539 F.3d 1011, 1016-17 (9th Cir. 2008). Plaintiffs cannot satisfy either.

(i) Plaintiffs Cannot Demonstrate Purposeful Direction

For specific jurisdiction to exist under the purposeful direction test, Fenix must have "(1) committed an intentional act, (2) expressly aimed at [California], (3) causing harm [they] kn[ew] [would] likely… be suffered in [California]." *Schwarzenegger*, 374 F.3d at 803. Plaintiffs do not and cannot allege Fenix undertook any tortious act "directly targeting [California]." *Handsome Music, LLC v. Etoro USA LLC*, 2020 WL 8455111 at *7 (C.D. Cal. Dec. 17, 2020).

FIL. Plaintiffs' allegations that they used OnlyFans in California are insufficient to establish that FIL directly targeted California. (FAC¶326.) As Judge Sykes observed in dismissing another OnlyFans-related case, "the mere operation of interactive website[s] visited by residents of a particular state does not, by itself, establish that Defendant either expressly aimed its conduct at that state or deliberately reached out to it." *Muto v. Fenix Int'l Ltd.*, 2024 WL 2148734 at *4 (C.D. Cal. May 2, 2024); *Doe 1 v. Fenix Int'l Ltd.*, 2024 WL 5505192, at *6 (N.D. Cal. Nov. 22, 2024) (similar). That is because Plaintiffs cannot "satisfy the defendant-focused minimum contacts inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." *Walden*, 571 U.S. at 284. Plaintiffs do not—and cannot—allege Fenix does anything to purposefully direct OnlyFans at California. *Muto*, 2024 WL 2148734 at *4; *Doe 1*, 2024 WL 5505192, at *6.

The Ninth Circuit's recent en banc decision in *Briskin v. Shopify, Inc.*, 2025 WL 1154075 (9th Cir. Apr. 21, 2025), does not change the calculus. *Briskin* held that a website operator can be subject to jurisdiction in California even if the website does not differentially target California consumers. *Id.* at *12. But it reaffirmed prior case law holding that a plaintiff must point to "something more than" a website's "mere passive nationwide accessibility" to subject the website operator to jurisdiction in California. *Id.* at *8. *Briskin* does not displace Judge Sykes's and Judge Breyer's well-reasoned conclusions that Fenix cannot be subject to jurisdiction in California merely because some users reside here. *Muto*, 2024 WL 2148734 at *4; *Doe 1*, 2024 WL 5505192, at *6.

Fenix Internet. Plaintiffs' allegations that Fenix Internet "directly or indirectly

collect[ed]" payments from Fans and remitted payments to Creators in California (FAC¶42) are irrelevant because Plaintiffs do not allege Fenix Internet's payment-processing services were tortious or caused them harm. *See Schwarzenegger*, 374 F.3d at 803. Moreover, Fenix Internet's payment processing services are initiated by consumers accessing OnlyFans—wherever they may be located—and therefore are not contacts Fenix Internet itself directed at California. *Muto*, 2024 WL 2148734 at *4 (rejecting jurisdiction over Fenix for OnlyFans-related claims); *Doe 1*, 2024 WL 5505192, at *6 (same).

(ii) Plaintiffs Cannot Demonstrate Purposeful Availment

For specific jurisdiction under the purposeful availment test, "the defendant *himself*" must undertake "actions" that "create a substantial connection with the forum State." *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015) (emphasis in original). A "contract" with plaintiff "alone does not automatically establish minimum contacts in the plaintiff's home forum." *Boschetto*, 539 F.3d at 1017.

FIL. The contracts formed when Plaintiffs accepted the Terms do not constitute purposeful availment by FIL. The Terms are offered to the world at large, not just California residents, and do not show FIL "deliberately reached out beyond" England and Wales "with a contract that envisioned continuing and wide-reaching contacts with California." *See Doe 1 v. NCAA*, 2023 WL 105096 at *11 (N.D. Cal. Jan. 4, 2023).

Fenix Internet. None of the "billing and payment" services Plaintiffs allege Fenix Internet performs take place in California, so there is no "substantial connection with California." *Healthcare Ally Mgmt. of Cal., LLC v. Blue Cross Blue Shield of Minn.*, 2018 WL 5880743 at *4 (C.D. Cal. June 6, 2018).

(b) Plaintiffs' Claims Do Not Arise Out of Fenix Internet's Allegedly Forum-Related Contacts

"A lawsuit arises out of a defendant's contacts with the forum state if… a direct nexus [exists] between the claims being asserted and the defendant's activities in the forum." *Garcia v. NutriBullet, L.L.C.*, 2022 WL 3574699, at *3 (C.D. Cal. July 14, 2022).

Plaintiffs' claims against Fenix Internet do not arise out of or relate to its payment

processing services, which are its only asserted tie to California. Accordingly, Plaintiffs cannot demonstrate their claims arise out of Fenix Internet's supposed contacts with California. *See Lightpath Cap., Inc. v. Phoenix Am. Hosp., LLC*, 2018 WL 5905387, at *6 (C.D. Cal. Apr. 5, 2018) (no personal jurisdiction existed where alleged harms did not arise from defendants' other California-related activities).

(c) The Court Should Transfer Claims Against Fenix Internet to Delaware

"When the district court lacks personal jurisdiction over" a defendant, "transfer pursuant to 28 U.S.C. § 1406(a) is appropriate." *Maschoff Brennan Laycock Gilmore Israelsen & Wright PLLC v. PilePro, LLC*, 2015 WL 13917884, at *5 (C.D. Cal. Oct. 27, 2015). Here, the Court should transfer Plaintiffs' claims against Fenix Internet to the District of Delaware, where it is subject to general jurisdiction. Doing so would comport with the forum-selection clause in the Terms providing that claims involving Fenix Internet (but not FIL) may be filed in Delaware. (ECF 60-1, PageID#366.) The Court found the forum-selection clause generally enforceable. (*See* ECF 117.) Enforcing it here would not offend California public policy because jury trials and class actions are available in Delaware federal court. (*Id*.)

II. PLAINTIFFS FAIL TO STATE A CLAIM AGAINST FENIX

A. None of Plaintiffs' Claims Against Fenix Are Plausible

To survive a motion to dismiss, Plaintiffs must plead a claim that is "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The FAC flunks this basic requirement. Plaintiffs' theory is (1) Agency Defendants impersonated Creators in chats with Plaintiffs, and (2) Fenix misrepresented and/or failed to stop them. (FAC¶¶101-54.) Plaintiffs allege no facts suggesting Fenix actually knew about the activities of which Plaintiffs complain. (*Contra id.*¶¶133-36.) Instead, Plaintiffs claim Fenix "should have known" because Creator accounts would have shown multiple simultaneous logins, and Fenix could infer from high chat volumes that Creators were using agencies. (*Id.*¶¶137-49.) But the FAC specifically pleads the Agency Defendants' contractors use technology to communicate

with Plaintiffs "without ever opening the official OnlyFans interface." (*Id.*¶¶112, 120-27.) And Plaintiffs do not plead facts showing Fenix did, or had any reason to, monitor individual Creators' chats to prevent the alleged activities, because using Agency Defendants' services does not violate OnlyFans' Terms. (ECF 60-1, PageID#374.) This fatal defect infects and renders implausible every claim.

B. Section 230 Bars Plaintiffs' Claims

47 U.S.C. §230 immunizes "(1) a provider… of an interactive computer service (2) whom a plaintiff seeks to treat… as a publisher or speaker (3) of information provided by another information content provider," *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019), and "extends to causes of action under both state and federal law." *Lewis v. Google LLC*, 461 F.Supp.3d 938, 953 (N.D. Cal. 2020). Plaintiffs' claims seek to treat Fenix as a publisher or speaker and are all barred by §230.[2]

FIL, by operating OnlyFans, "facilitate[s] the connection of countless online users to a common database" and "qualif[ies] as [an] interactive computer service[]." *Hicks v. Bradford*, 2023 WL 6190884, at *2 (C.D. Cal. Aug. 17, 2023). Plaintiffs allege Fenix "facilitated" and knew or "should have known" of others' use of "Chatters" to communicate with Plaintiffs without their consent. (*See, e.g.*, FAC¶¶7, 156, 171, 440-41, 459, 470, 482, 510, 542.) As the Ninth Circuit recently made clear, Plaintiffs cannot hold Fenix liable for "facilitating communication among users" that results in alleged tortious or illegal activity, like fraud. *Doe v. Grindr Inc.*, 128 F.4th 1148, 1152-53 (9th Cir. 2025). Section 230 bars Plaintiffs' claims because they "necessarily implicate [Fenix's] role as a publisher of third-party content," and "require [Fenix] to monitor third-party content"—Plaintiffs' alleged communications with "Chatters"—to avoid liability. *Id.* at 1153. Because Fenix expressly disclaims any obligation to monitor third-party content, these

[2] This Court recognized Plaintiffs do not dispute they are bound by the Terms, which contain an "English choice-of-law provision." (ECF 117, PageID#1506-07, 1509, 1519.) This Motion addresses Plaintiffs' claims under federal and California law because, as Fenix showed, English law is substantially similar, but without waiving Fenix's right to enforce their choice-of-law clause in the future.

claims fail.[3]

Plaintiffs' claims that Fenix "falsely promised" Plaintiffs "'authentic' communications" with Creators likewise rely on Fenix to monitor communications for purported "authenticity." (*See, e.g.*, FAC¶¶133-49, 363-65, 444, 498-501, 505-07, 523, 529, 539.) These claims also fail as promises "too general to be enforced," *Grindr*, 128 F.4th at 1154, particularly because Fenix expressly "make no promises or guarantees about the accuracy" of "materials which [Fenix] make accessible on OnlyFans," and do not guarantee "that [u]sers will achieve any particular result or outcome from using such materials." (ECF 60-1 PageID#360.)

C. Plaintiffs Fail to Plead RICO or RICO Conspiracy Claims

To state a RICO claim, a plaintiff must allege: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Meyer v. One West Bank, F.S.B.*, 91 F.Supp.3d 1177, 1182 (C.D. Cal. 2015). To state a claim for RICO conspiracy, Plaintiffs must also allege "the assent of each defendant" to the conspiracy. *United States v. Brooklier*, 685 F.2d 1208, 1222 (9th Cir. 1982).

"A pattern of racketeering activity requires at least two predicate acts of racketeering activity, as defined in 18 U.S.C. §1961(1)." *Canyon Cnty. v. Syngenta Seeds, Inc.*, 519 F.3d 969, 972 (9th Cir. 2008). Here, the only statutorily permissible RICO predicates Plaintiffs claim are alleged acts of wire fraud.[4] (FAC¶382.) To plead a RICO claim based on wire fraud, Plaintiffs must allege: "(A) the formation of a scheme to defraud, (B) the use of the mails or wires in furtherance of that scheme, and (C) the specific intent to defraud." *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014).

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[3] The Terms state Fenix "are not responsible for reviewing or moderating Content," "cannot control and will not be responsible to [Plaintiffs] for the use which other [u]sers *or third parties* make" of content Plaintiffs upload to OnlyFans, and "are under no obligation to monitor Content or to detect breaches of the Terms." (ECF 60-1 PageID#359-60.)

[4] Although Plaintiffs allege additional acts supposedly relevant to their RICO claims (FAC¶422), none appear to fall under the list of permissible RICO predicates under §1961(1). *See Banks v. ACS Educ.*, 638 F.App'x 587, 589 (9th Cir. 2016) (affirming dismissal of RICO claim because violations of statutes not listed within 1961(1) do not constitute racketeering activity).

Plaintiffs' RICO claims fail in multiple respects.

First, as explained in §§III-IV of Moxy Management's motion to dismiss, which Fenix join, Plaintiffs fail to allege the existence of a racketeering enterprise, and do not plead that they suffered a concrete financial loss nor that Defendants formed a conspiracy to violate RICO or commit wire fraud.

Second, the FAC is devoid of facts indicating Fenix had a specific intent to mislead Fans or conspired with Creators or the Agency Defendants to defraud Fans. Instead, Plaintiffs make only conclusory allegations that all "Defendants acted with the specific intent to deceive and defraud Fans to increase their profits." (FAC¶381.) Such "[t]hreadbare recitals of [an] element[] of a cause of action, supported by mere conclusory statements," is not enough to state a claim under any pleading standard, *see Iqbal*, 556 U.S. at 678, let alone that Fenix formed a specific intent to commit wire fraud against their users. *See, e.g.*, *Manos v. MTC Fin., Inc.*, 2017 WL 8236356, at *10 (C.D. Cal. Dec. 21, 2017) ("conclusory allegation that Defendants possessed a specific intent to defraud to accomplish the purpose of each scheme" insufficient); *Helms v. Wells Fargo Bank, N.A.*, 2018 WL 6133715, at *4 (C.D. Cal. June 19, 2018) (similar).

D. Plaintiffs Fail to Plead a VPPA Claim

The VPPA prohibits "knowingly disclos[ing], to any person, personally identifiable information ["PII"] concerning any consumer" of a video tape service provider. 18 U.S.C. §2710(b)(1). Plaintiffs do not plead a plausible VPPA claim.

First, Plaintiffs cannot assert claims against an entity tangentially related to a purported disclosure if that entity does not actually control the disclosure. *See Mollett v. Netflix, Inc.*, 795 F.3d 1062, 1066 (9th Cir. 2015) ("The lawfulness of this disclosure cannot depend on circumstances outside of [defendant's] control."). Alleging "the mere *possibility* that information could be disclosed" to others, not that defendant "*in fact* made such disclosures," is insufficient. *Beagle v. Amazon.com, Inc.*, 2024 WL 4028290, at *3 (W.D. Wash. Sept. 3, 2024) (emphasis in original).

Plaintiffs never allege Fenix *themselves* have "taken the affirmative act of

disclosing" any PII. *Id.* Instead, Plaintiffs allege actions by "management agencies" outside Fenix's control—"on behalf of and at the direction of the *Creators*"—and allege Fenix "disclosed Plaintiffs'… [PII] to other people" only by "facilitat[ing] the communication of information between Fan and Creator [OnlyFans] accounts" (but *not* on "the OnlyFans platform itself.") (FAC¶¶112, 461.) Plaintiffs' acknowledgment that Fenix's only purported role is to "facilitat[e]" disclosures by others ends their claim.

Second, Plaintiffs do not plead facts indicating Fenix "knowingly" disclosed Plaintiffs' PII. "[K]nowingly connotes actual knowledge" and "means consciousness of transmitting the private information." *In re Hulu Priv. Litig.*, 86 F.Supp.3d 1090, 1095 (N.D. Cal. 2015). The FAC asserts Fenix "should know" Creators used others to manage their interactions—"an open secret to industry insiders." (FAC¶¶129, 137.) But whether Fenix *should know* is irrelevant to the VPPA: there are no allegations establishing Fenix had *actual knowledge of a specific disclosure* made by a Creator to an Agency. *See Bernardino v. Barnes & Noble Booksellers, Inc.*, 2017 WL 3727230, at *9 (S.D.N.Y. Aug. 11, 2017) (explaining plaintiff "must prove that the defendant knew that a third party would actually link information it had with other information conveyed and become aware that a particular person had in fact purchased a particular video" (citing *Hulu*)).

Third, PII is "information that would readily permit an ordinary person to identify a specific individual's video-watching behavior" and must include "some information that can be used to identify an individual." *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 984-85 (9th Cir. 2017). PII does not include "information" that "*cannot* identify an individual unless it is combined with other data" through a method "an ordinary person could not use." *Id.* at 986 (emphasis in original). "[A]nonymous usernames" alone are not PII because they do not "identify an actual, identifiable person and link that person to a specific video choice." *In re Nickelodeon Consumer Priv. Litig.*, 2014 WL 3012873, at *12 (D.N.J. July 2, 2014); *see also Afriyie v. NBCUniversal Media, LLC*, 2025 WL 962033, at *12 (S.D.N.Y. Mar. 31, 2025) (dismissing VPPA claim where "there are no allegations that these profiles contain any further identifying information, such as names or addresses" and

"*Plaintiffs allege that the profiles are themselves anonymous*"). Courts in this District dismiss VPPA claims alleging disclosure of a user ID where plaintiffs do not establish their "profile is publically accessible" and "includes sufficient identifying information," such as "name, gender, birthday, place of residence, career, education history, photographs, and content of posts." *Smith v. Trinity Broad. of Texas, Inc.*, 2024 WL 4394557, at *3 (C.D. Cal. Sept. 27, 2024) (collecting cases).

Plaintiffs allege Fenix collect information like "email address[es]" and "telephone number[s]," but admit the only information purportedly disclosed to others was the Fans' "communication history" with a Creator, which displays "the Fan's username," not their real name. (FAC¶¶449-51.) While Plaintiffs contend a "username" can be used to "view the Fan's profile on OnlyFans," they do *not* allege their profiles contain sufficient information to identify them; rather, they allege Fans use "pseudonyms as a matter of course… to remain anonymous." (FAC¶¶27, 450.)[5] Their VPPA claim fails.

E. Plaintiffs Fail to Plead a CIPA Claim

Plaintiffs allege communications they sent to a Creator's account on OnlyFans were then "disclosed to… contractors of the Agency Defendants" without their consent. (FAC¶¶254-55, 269.) Plaintiffs claim Fenix aided Agency Defendants in "obtain[ing]" and "us[ing]" those messages by "track[ing] Plaintiffs'… communications… on the OnlyFans website." (*Id.*¶¶476-87.) Plaintiffs' CIPA claim fails.

First, "[c]onsideration of consent is appropriate on a motion to dismiss" CIPA claims. *Silver v. Stripe Inc.*, 2021 WL 3191752, at *2 (N.D. Cal. July 28, 2021); *see also Smith v. Facebook, Inc.*, 262 F.Supp.3d 943, 955 (N.D. Cal. 2017), ("Plaintiffs' consent bars" CIPA claim "because [CIPA] imposes liability only for interception without the consent of all parties"). Courts "consistently hold that terms of service and privacy policies… can establish consent to the alleged conduct challenged under" CIPA. *See Silver*,

[5] If Plaintiffs *themselves* disclosed information in their profiles or communications that enabled others to identify them, they agreed their "Content may be viewed by individuals that recognise [their] identity" and Fenix are "not in any way… responsible" if Plaintiffs "are identified from [their] Content." (ECF 60-1, PageID#359.)

2021 WL 3191752, at *3-4 (N.D. Cal. July 28, 2021) (collecting cases) (dismissing claim where plaintiff agreed to privacy policy which disclosed personal information would be shared with third parties, establishing consent); *Libman v. Apple, Inc.*, 2024 WL 4314791, at *7-8 (N.D. Cal. Sept. 26, 2024) (dismissing CIPA claim where privacy policy "sufficiently disclosed the challenged data collection").

Plaintiffs did not and cannot dispute they expressly agreed to the Terms and the Privacy Policy. (ECF 117, PageID#1509; *see also* ECF 85, 87.) Indeed, Plaintiffs allege the Privacy Policy and Terms are part of "the legally binding agreement between [Plaintiffs] and [Fenix]" and quote them at length, admitting the Privacy Policy disclosed Fenix would process "customer data" like "comments… from your Fan account" and "chat messages between you and other users," including Creators. (*See, e.g.* FAC¶¶139, 163-66, 449.) The Privacy Policy further disclosed Fenix may: "[m]oderat[e]… text and content uploaded to the Website" and "content sent in chat messages"; "share personal data" with "third-party service providers," including "content and text moderation… providers"; and disclose "personal data" to "third parties for various business purposes." (ECF 62-1, PageID#525, 527, 535.) "Having alleged that they understood and agreed to [Defendants'] policies, *Plaintiffs cannot now claim to be ignorant of their contents*." *Smith*, 262 F.Supp.3d at 953 (dismissing CIPA claim where plaintiffs alleged policies "constitute a valid contract" and "allege[d] that they relied on [defendant's] assertions in the very same contracts").

Agreeing to the Terms, Plaintiffs expressly "*consent[ed]* to… the processing of [their] personal data as more fully detailed in [OnlyFans'] Privacy Policy" and "acknowledge[d]" that "[o]nce [their] Content"—defined as "any material uploaded to OnlyFans by any User (whether a Creator or a Fan), including any photos, videos…, text…, and any other material whatsoever"—is "posted on OnlyFans, [Fenix] cannot control and will not be responsible to [Plaintiffs] for the use which *other Users or third parties make of such Content*," and "do not select or modify the Content that is *stored or transmitted* via OnlyFans." (ECF 60-1, PageID#354, 357, 359-60.)

Because Plaintiffs expressly consented to any alleged Fenix "tracking," storage, and disclosure of Plaintiffs' communications to Creators and others, and agreed Fenix are not responsible for any subsequent "use" of those communications, Plaintiffs' CIPA claim fails.

Second, as explained in §VII of Moxy Management's motion to dismiss, which Fenix join, Plaintiffs cannot show third parties read their messages "in transit" as CIPA requires because Plaintiffs allege their communications were not "distributed [to] and/or accessible" by software employed by third parties until *after* they were received by the Creator's account. (*See, e.g.*, FAC¶¶5, 112-13, 122-24); *Boulton v. Community.com, Inc.*, 2025 WL 314813, at *1 (9th Cir. Jan. 28, 2025) (affirming dismissal of CIPA claim with prejudice where defendant app received and forwarded text messages to celebrities because defendant "could have only read or attempted to read [message] *after it was received*… so the text could not have been accessed 'in transit' within the meaning of § 631(a).").

Third, Plaintiffs' allegation that Fenix's "computer code and programs… track[ed]" Plaintiffs' communications on OnlyFans (FAC¶479) "does not allege specific facts as to how or when the interception takes place, which… fall[s] short of stating a plausible claim under" CIPA. *See Licea v. Cinmar, LLC*, 659 F.Supp.3d 1096, 1109–10 (C.D. Cal. 2023) (dismissing §631 claim); *Heiting v. Athenahealth, Inc.*, 2024 WL 3761294, at *5 (C.D. Cal. July 29, 2024) (dismissing §631 claim because "[t]hough Plaintiff alleges in general terms the interception occurs through software embedded in Defendant's website, she does not include additional factual details establishing when the interception occurs"). Plaintiffs' conclusory allegations regarding Fenix's role in the purported "wiretapping" are likewise insufficient, and contradict Plaintiffs' amended allegations that "Chatters" are not using the OnlyFans platform directly. *Supra*, §II.A.

F. Plaintiffs Fail to Plead a Claim Under Penal Code §502

California Penal Code §502 is an "anti-hacking statute intended to prohibit the unauthorized use of any computer system for improper or illegitimate purpose." *Custom Packaging Supply, Inc. v. Phillips*, 2015 WL 8334793, at *3 (C.D. Cal. Dec. 7, 2015).

Section 502 claims "sound[] in fraud," and are therefore "subject to Rule 9(b)'s pleading standard." *Nowak v. Xapo, Inc.*, 2020 WL 6822888, at *5 (N.D. Cal. Nov. 20, 2020). Plaintiffs claim Fenix violated §502 by taking their data without permission and also assisting the Agency Defendants in doing so. (FAC¶¶471-72.) This claim fails.

First, Plaintiffs must allege Fenix accessed Plaintiffs' data "without permission" by "overcom[ing] technical or code-based barriers." *Gutierrez v. Converse, Inc.*, 2023 WL 8939221, at *4 (C.D. Cal. Oct. 27, 2023). Plaintiffs do not and cannot allege Fenix overcame any such barriers because FIL owns and operates OnlyFans and "there are "no technical barriers blocking [it] from using its own [w]ebsite." *Id*. Nor do Plaintiffs allege the Agency Defendants overcame any technical barriers; rather Plaintiffs allege they obtained permission and login credentials from Creators to access Plaintiffs' chats. (FAC¶468.) Accordingly, Plaintiffs do not satisfy §502's "without permission" element.

Second, Plaintiffs must plead that Fenix committed any alleged violations "knowingly." Cal. Penal Code §502(c)(2)-(3), (6)-(7). As shown, Plaintiffs fail to plead Fenix *knew* any Agency Defendant was accessing chats for any Creator "without permission" and by "overcoming technical or code-based barriers." *Supra*, §II.A.

Third, Plaintiffs must plead they suffered "damages or loss by reason of a violation." Cal. Penal Code §502(e)(1). Plaintiffs assert Fenix caused them "damages including invasion of privacy, emotional distress, and economic losses." (FAC¶474.) But the "majority of courts to consider the issue" have found that inchoate harms like "privacy invasions" and emotional distress "do not qualify" as damages under §502. *Heiting v. Taro Pharms. USA, Inc.*, 709 F.Supp.3d 1007, 1020-21 (C.D. Cal. 2023) (collecting cases). Plaintiffs also plead no facts in support of their economic damages claim. *See Gutierrez*, 2023 WL 8939221, at *5 (dismissing conclusory damages claim).

Fourth, Plaintiffs fail to plead a single fact in support of their §502(2)-(3) claims that Fenix improperly took, accessed, or used Plaintiffs' data. (FAC¶472.) Their theory is the Agency Defendants improperly participated in Creator chats, not that Fenix misappropriated data through computer hacking, since users consensually posted the

content on OnlyFans. (*Id.*¶¶250-323.) Plaintiffs' conclusory allegation should be dismissed as insufficient under Rule 9(b).

G. Plaintiffs Fail to Plead a Breach of Contract Claim

To state a breach of contract claim, Plaintiffs must plead: (1) the existence of a contract; (2) performance by one party; (3) breach by the other party; and (4) damages. *Oasis W. Realty, LLC v. Goldman*, 51 Cal.4th 811, 821 (2011). Plaintiffs do not invoke the Terms; instead, they claim "[w]hen a Fan goes to subscribe to a Creator's page," the site "promise[s]" they "will be able to '[d]irect message with this' Creator," which forms *separate* contracts with Fenix for every subscription supposedly breached when Plaintiffs allegedly communicated with third parties. (FAC¶¶497-504.)

But a plaintiff cannot allege a breach of alleged promises made outside of the four corners of an integrated contract. *See, e.g.*, *EPA Real Estate P'ship v. Kang*, 12 Cal.App.4th 171, 175 (1992) (holding integrated contract is "the final contract between the parties" and cannot be contradicted by "collateral agreements"); *AMC Tech., LLC v. Cisco Sys., Inc.*, 2012 WL 174949, at *6 (N.D. Cal. Jan. 20, 2012) (dismissing breach of contract claim where "integration clause by its terms bar[red] any extra-contractual promises"). The Terms' integration clause states Plaintiffs have "[n]o implied… rights… save as expressly set out in the Terms," and the Terms "form the entire agreement between [Fenix] and [Plaintiffs] regarding [their] access to and use of OnlyFans." (ECF 60-1, PageID#365-66.)

Moreover, courts ascertain the terms of the parties' agreement from their written contract "alone." *Block v. eBay, Inc.*, 747 F.3d 1135, 1138 (9th Cir. 2014); *see also Caraccioli v. Facebook, Inc.*, 700 F.App'x 588, 590 (9th Cir. 2017) (affirming dismissal of breach claim barred by terms of service); *Morton v. Twitter, Inc.*, 2021 WL 1181753, at *5 (C.D. Cal. Feb. 19, 2021) (dismissing breach claim where terms barred claim based on separate policy). The Terms state transactions between Fans and Creators are "contracts between Fans and Creators," Fenix are *not* parties to those contracts and are "not responsible for any Fan/Creator Transaction," and Creators may "have an agent, agency, management company or other third party which assists [them] with the operation of [their]

Creator account (or operates it on [their] behalf)." (ECF 60-1, PageID#370-71, 374.) The Terms also disavow any Fenix obligation to monitor content or responsibility for its accuracy or use by others. *Supra*, §II.B. These provisions extinguish Plaintiffs' claim that Fenix had any contractual obligation to ensure Plaintiffs were interacting with specific Creators.

H. Plaintiffs Fail to Plead Fraud or Deceit Claims

To state a claim for fraud or deceit, Plaintiffs must plead: "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or scienter); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Lazar v. Superior Court*, 12 Cal.4th 631, 638 (1996). Fraud must be pleaded with particularity, meaning Plaintiffs must "articulate the who, what, when, where, and how of the misconduct alleged." *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1126 (9th Cir. 2009). Plaintiffs allege Fenix fraudulently represented they would be interacting with individual Creators, when some Creators were outsourcing their interactions to the Agency Defendants. (FAC¶505.) Plaintiffs' claims fail.

First, a plaintiff cannot allege defendant misrepresented information that was disclosed. *See Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1163 (9th Cir. 2012) (affirming dismissal of fraud claim due to defendant disclosure); *Barrett v. Apple Inc.*, 523 F.Supp.3d 1132, 1152 (N.D. Cal. 2021) (dismissing fraud claim contradicted by website disclaimers). The Terms disclose Creators may "have an agent… or other third party" that assists them, and Fenix "cannot control" how Creators or third parties "use" content provided by Fans, "make no promises or guarantees about the accuracy or otherwise" of materials made available to Fans, and "are not responsible for reviewing or moderating Content." (ECF 60-1, PageID#359-60, 374.)

Second, while the FAC alleges Plaintiffs "justifiably relied" on Twitter posts and marketing statements buried on OnlyFans' website (FAC¶¶81-92, 251, 264, 505-09, 525), neither Plaintiff sufficiently "specif[ies] when he was exposed to them or which ones he found material." *Kearns*, 567 F.3d at 1126; *see also Moody v. Hot Topic, Inc.*, 2023 WL

9511159, at *7 (C.D. Cal. Nov. 15, 2023) (dismissing misrepresentation claims where plaintiffs failed to "provide the particulars of their own experience reviewing or relying upon any representations").

Third, "merely conclusory" allegations of "scienter and intent to defraud" fail to state a claim. *Hodes v. Van's Int'l Foods*, 2009 WL 10674101, at *3 (C.D. Cal. June 23, 2009) (dismissing fraud claim). Plaintiffs allege Fenix "*should know* about" Creators' use of third parties "from monitoring its platform" (FAC¶137), but do not explain how Fenix would "know" the identity of individuals typing in a Creator interaction.

Fourth, Plaintiffs cannot base a fraud claim on a "vague and subjective" statement that is "not a specific and measurable claim." *Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 731 (9th Cir. 1999). To the extent Plaintiffs' claims rely on alleged representations about "foster[ing] authentic relationships" and "authentic connections," (*see, e.g.*, FAC¶¶82, 84), these statements are non-actionable as a matter of law because they are "incapable of objective verification and not expected to induce reasonable consumer reliance." *Summit Tech., Inc. v. High-Line Med. Instruments, Co.*, 933 F.Supp. 918, 931 (C.D. Cal. 1996); *see also Henderson v. Gruma Corp.*, 2011 WL 1362188, at *11 (C.D. Cal. Apr. 11, 2011) (statements promising "[a]uthentic [t]radition" were too vague to be actionable).

I. Plaintiffs Fail to Plead UCL or FAL Claims

California's UCL prohibits "unlawful, unfair or fraudulent business" practices, along with false advertising. Cal. Bus. & Prof. Code §17200. The FAL prohibits "untrue or misleading" advertising statements the speaker knows, or through "reasonable care" should know "to be untrue or misleading." *Id.* §17500. Plaintiffs allege Fenix violated these statutes by: (1) promising Plaintiffs would be able to interact directly with Creators, when some Creators were working with agencies to manage their interactions; (2) violating CIPA; (3) committing fraud; and (4) purportedly failing to enforce the Terms to prevent Creators from misleading Fans regarding their work with agencies. (FAC¶¶527-46.) Because these claims sound in fraud, they are subject to Rule 9(b)'s stringent pleading

requirements. *See Kearns*, 567 F.3d at 1125.

To the extent Plaintiffs' UCL and FAL claims are predicated on their fraud, deceit, and CIPA theories, they fail because Plaintiffs' other claims fail. *Supra*, §§II.B., E., H. Moreover, to the extent Plaintiffs' UCL claim is based on Fenix's alleged failure to "enforc[e] their policies and [Terms]… or ensur[e] the Creators are engaging in direct communications with the Fans" (FAC¶539(c)), the Terms make clear Fenix "are under no obligation to monitor Content or detect breaches of the Terms," or ensure Creators are personally interacting with Fans. *Supra*, §II.B., G-H. Plaintiffs cannot now claim that it was unfair for Fenix not to detect breaches. *See Morton*, 2021 WL 1181753, at *5 (dismissing UCL claims where social media platform terms of service "specifically disclaim[ed]" responsibility for actions by third parties using the platform).

III. VENUE IS IMPROPER AS TO PLAINTIFF R.M.

The Court should dismiss Plaintiff R.M.'s claims for improper venue. In a putative class action, venue must be proper as to each named plaintiff. *See In re Bozic*, 888 F.3d 1048, 1053 (9th Cir. 2018). Plaintiffs assert venue is proper pursuant to 28 U.S.C. §1391(b)(2) because "a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred" in this District. (FAC¶23.) To invoke this transactional theory of venue, R.M. must show "significant events or omissions material to [his] claim… occurred in the district in question." *Burke v. Olden*, 2023 WL 4157456, at *2 (C.D. Cal. May 24, 2023).

R.M. cannot carry this burden. "[D]uring the time period at issue" R.M. "was a resident of El Dorado Hills" (FAC¶30) in the Eastern District of California. *See* 28 U.S.C. §84(b). Although R.M. claims he subscribed to Creators managed by two Agency Defendants located in this District, he further alleges the contractors he purportedly interacted with were located in foreign "countries like the Philippines or Venezuela." (FAC¶¶4, 105.) R.M. does not allege his personal harms or any material conduct by *any* Defendant occurred in this District. Accordingly, R.M. fails to carry his burden to show venue, and his claims must be dismissed. *See Busbice v. Vuckovich*, 2016 WL 10586306, at *2 (C.D. Cal. Dec. 9, 2016) (no venue where "little of Defendants' alleged involvement

giving rise to the claims alleges against them occurred in this district").

CONCLUSION

The Court should dismiss the FAC for lack of personal jurisdiction, failure to state a claim, and/or improper venue.

DATED: May 23, 2025 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants Fenix International Limited and Fenix Internet LLC, certifies that this brief contains 6,986 words, which complies with the word limit of C.D. Cal. L.R. 11-6.1.

DATED: May 23, 2025 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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